

CRETACEOUS PARTNERSHIP  
RBE, INC.

IBLA 83-63; IBLA 83-64

Decided August 22, 1983

Appeals from decisions of Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications pursuant to protests. C-35311 and C-35269.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases:  
First-Qualified Applicant

BLM may properly reject a simultaneous oil and gas lease application filed by a partnership or a corporation where it is not accompanied by evidence of partnership qualifications, in the case of a partnership, in accordance with 43 CFR 3102.2-4 (1981), or by evidence of corporate qualifications, in the case of a corporation, in accordance with 43 CFR 3102.2-5 (1981), or by any reference to a serial number indicating where such information can be found, in accordance with 43 CFR 3102.2-1(c) (1981). Reference to a serial number on a document attached to the application will not suffice to comply with 43 CFR 3102.2-1(c) (1981).

APPEARANCES: Roberta W. Lee, Esq., Malibu, California, for appellants; Gregory S. Petrie, Esq., Seattle, Washington, for appellee Laura Harvey; Ruth Brammer Johnson, Esq., for appellee Beverly Schuck.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Cretaceous Partnership (Cretaceous) and RBE, Inc. (RBE), have appealed from decisions of the Colorado State Office, Bureau of Land Management (BLM), dated September 9, 1982, rejecting their simultaneous oil and gas lease applications, C-35311 and C-35269, respectively, pursuant to protests filed by the second-drawn applicants, Laura Harvey and Beverly Schuck, respectively.

Appellants' applications were drawn with first priority for parcels CO-219 (Cretaceous) and CO-177 (RBE) in the January 1982 simultaneous oil and gas lease drawing. On August 12, 1982, appellee Laura Harvey filed a protest with respect to application C-35311, charging in part that Cretaceous had failed to submit statements of partnership qualifications, in compliance with 43 CFR 3102.2-4. On June 4, 1982, appellee Beverly Schuck filed a protest with respect to application C-35269, charging in part that RBE had failed to submit statements of corporate qualifications, in compliance with 43 CFR 3102.2-5. In its September 1982 decisions, BLM concluded that appellants had failed to submit the required statements of qualifications with the lease applications or to refer to a qualifications file in which the documents had previously been filed, by inserting a serial number on the application form. In addition, BLM concluded that appellants had failed to submit supplemental statements within 15 days after the filing period closed on January 22, 1982. BLM noted that it had received a letter, dated January 21, 1982, from Federal Lease Filing Corporation (Federal Lease), which acted as appellants' agent in submitting the lease applications, on January 22, 1982, which stated that "for those clients without acknowledged serial numbers the material had been filed in the California State Office but that no number had yet been assigned" (Decision of Cretaceous Partnership at 1). BLM held, however, that it was incumbent on appellants "either to insure that a serial number had been assigned and enter such number on the application or to submit satisfactory evidence of its qualifications with its application" and that failure to do either necessitated rejection of the applications. Id. at 1-2 (emphasis in original).

In their statements of reasons for appeal, appellants contend that they complied with the requirement to submit statements of qualifications of the partnership (C-35311) and of the corporation (C-35269), by reference, by assigned serial number, to the qualifications file where the documents had previously been filed on the cover letter which accompanied their applications, in accordance with 43 CFR 3102.2-1(c). Appellants state that there is no regulatory requirement that the reference by assigned serial number be on the application. Appellants submit a copy of a letter to the Colorado State Office, BLM, from their agent, Federal Lease, dated January 21, 1982, which states:

Enclosed herewith are offers to lease specified parcels in the Simultaneous Oil and Gas Program, consisting of Lease Applications, which are submitted on behalf of our clients. [1/]

The Statements of Qualifications requested under 43 CFR Section 3102.2 for many of these clients have been prefiled with the Bureau of Land Management office in Sacramento, California, and have been assigned the Serial Number CA-3000.

For those clients without an acknowledged Serial Number, wherein we have submitted their documents and requested a serial number to be assigned prior to the January filing deadline, we

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1/ The letter further states that Federal Lease was submitting 3,025 simultaneous oil and gas lease applications.

have left the qualification space blank on our clients' application cards.

Appellants also submit copies of letters to the California State Office, BLM, from their agent, Federal Lease, dated January 19, 1982 (C-35311), and January 18, 1982 (C-35269), which both state: "We are enclosing herewith Statements of Qualifications for both agency and entity where it applies pursuant to 43 CFR 3102.2 for those of our clients whose names are set forth on Attachment 'A' of this letter." In each of the two letters, Federal Lease requested BLM to file these statements "for reference of each of these clients in the simultaneous oil and gas lease drawings in various states for this month and future months," to acknowledge receipt of the documents and to assign a serial number. At the bottom of each of the two letters, a BLM employee acknowledged receipt and indicated that the statements had been assigned serial number CA-3000. Both acknowledgments are dated January 20, 1982. Cretaceous is listed on attachment "A" to the January 19 letter and RBE is listed on attachment "A" to the January 18 letter.

[1] It is well settled that a simultaneous oil and gas lease application filed in the name of a corporation or a partnership must be accompanied by statements of corporate qualifications, in the case of corporations, as required by 43 CFR 3102.2-5 (1981), or by statements of partnership qualifications, in the case of partnerships, as required by 43 CFR 3102.2-4 (1981). James W. Lacy, 69 IBLA 285 (1982); Cluff Oil, Inc., 64 IBLA 156 (1982). <sup>2/</sup> As an alternative to filing the qualification statements with the application, an applicant may place the documents on file with any BLM office and make reference to such file, by assigned serial number, in any future filings. This procedure is set forth in 43 CFR 3102.2-1(c) (1981), which specifically states, in pertinent part:

A statement of the qualifications of a \* \* \* association (§ 3102.2-4), corporation (§ 3102.2-5) \* \* \* may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement.

The simultaneous oil and gas lease application form (Form 3112-1 (September 1981)), contains a space on the back for the identification of the serial number, preceded by the words: "If statements of qualifications have been filed previously, identify serial records involved."

<sup>2/</sup> On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirements to file statements of corporate and partnership qualifications, previously required by 43 CFR 3102.2-4 and 43 CFR 3102.2-5. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party, it is not possible to do so in these cases because of the intervening rights of the second and third priority applicants. James W. Lacy, *supra*; Rockies Energy Corp., 66 IBLA 313 (1982).

Appellants assert that they sought to comply with 43 CFR 3102.2-4 (1981) and 43 CFR 3102.2-5 (1981) by means of the method outlined in 43 CFR 3102.2-1(c) (1981), and that the appropriate serial number, CA-3000, was identified on a letter which accompanied the lease applications. It is clear that the January 1982 letter indicated that serial number CA-3000 had been assigned with respect to the qualifications statements of "many" of its clients and, presumably, that number had been placed on those lease applications. <sup>3/</sup> However, the letter also stated that the qualifications space on the lease applications of "those clients without an acknowledged Serial Number" had been left blank. The qualifications spaces on appellants' lease applications were left blank. Therefore, we must conclude that Federal Lease was not aware of the serial number assigned by BLM on January 20, 1981, with respect to appellants' qualifications statements. Indeed, the lease applications of Cretaceous and RBE are, respectively, dated January 20, 1982, and January 19, 1982. We drew this same conclusion recently in James W. Lacy, supra, which involved a lease application filed on behalf of Precambrian-Quaternary Joint Venture (Precambrian), a partnership, by Federal Lease and accompanied by an identically worded January 1982 letter. We concluded that: "It is clear that FLPC [Federal Lease] left the qualification space blank because it did not know what serial number would be assigned to Precambrian's qualifications." Id. at 288. We held that "until the applicant is notified of the assignment by BLM of a serial number to his qualifications \* \* \* the applicant must file the statement with BLM, and may not leave the space blank in expectation that a number will be assigned." Id. We concluded in Lacy that the lease application of Precambrian was properly rejected. This reasoning applies equally in the present case.

Moreover, even if we assume that appellants were aware of the serial number assigned to their qualifications statements and that, while the qualifications spaces on their applications were inexplicably left blank, the January 1982 letter supplied that number, the result is not changed. As such, we conclude that reference to the relevant qualifications file, by assigned serial number, on a document attached to a simultaneous oil and gas lease application does not constitute compliance with 43 CFR 3102.2-1(c) (1981).

43 CFR 3102.2-1(c) (1981) plainly does not require that reference to the qualifications file by assigned serial number must be made on the lease application. The regulation simply provides that: "Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement." Id. We have consistently held, however, that compliance with the regulation is accomplished by placing the serial number on the lease application. See, e.g., KVK Partnership, 69 IBLA 199 (1982); Frandy, Inc., 69 IBLA 26 (1982). We believe that this holding is mandated by the provision in the regulations that simultaneous oil and gas lease applications which are "properly completed and signed \* \* \* shall be filed

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<sup>3/</sup> Appellee Beverly Schuck has provided evidence on appeal that with respect to the simultaneous oil and gas lease application filed by Federal Lease, on behalf of the RMH Group Association, for parcel CO-177 in the January 1982 simultaneous oil and gas lease drawing, reference to qualifications file CA-3000 was made on the back of the application form.

in the proper office of the Bureau of Land Management." 43 CFR 3112.2-1(g) (1981) (emphasis added). The lease application form clearly contemplated that identification of the assigned serial number would be made on the form. A space is provided on the back of the form, which is preceded by the words: "If statements of qualifications have been filed previously, identify serial records involved." This case is analogous to cases involving failure to answer questions (d) through (f), with respect to multiple filings and other parties in interest on the back of the application form. There is no mandate in the regulations that questions (d) through (f) be answered, other than the requirement that the lease application be "properly completed." Nevertheless, we have held that questions (d) through (f) must be answered on the application form itself and not on an attachment, in accordance with 43 CFR 3112.2-1(g). Carol V. Miller, 66 IBLA 394 (1982); Vincent M. D'Amico, 55 IBLA 116 (1981), appeal dismissed, D'Amico v. Watt, Civ. No. 81-2050 (D.D.C. Aug. 31, 1981). Similarly, where the application form provides a space for the identification of the serial number assigned to a qualifications file, placing the number on an attached document is simply not proper completion of the lease application. As we said in Clyde K. Kobbeman, 58 IBLA 268, 272-73, 88 I.D. 915, 917 (1981), appeal pending, Estate of Kobbeman v. United States, Civ. No. 82-0774 (D.D.C. filed Feb. 23, 1982): "To hold otherwise would allow others to invent divergent ways to file applications. In view of the vast number of applications handled by BLM each month, the result of such indulgence could be chaos."

Appellants, however, seek to invoke the case of Hercules (A Partnership), 67 IBLA 151 (1982), appeal dismissed sub nom. Grooms v. Watt, Civ. No. 82-2179 (D. Colo. July 13, 1983), which involved a lease application, signed by an individual on behalf of a partnership, which did not indicate on the application form the relationship of the signatory and the applicant, in accordance with 43 CFR 3112.2-1(b) (1981). That regulation provides that: "Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship." Id. We concluded that the regulation was satisfied where, although the relationship of the parties was not indicated on the application form itself, nevertheless, the application was rendered in the appropriate manner by reference to a qualifications file which contained the requisite information. Hercules, however, is not controlling in this case because appellants' applications were not completed in a manner to provide the information required by 43 CFR 3102.2-4 (1981) and 43 CFR 3102.2-5 (1981).

Assuming, arguendo, that appellants complied with 43 CFR 3102.2-1(c) by reference to the relevant qualifications file, by assigned serial number, on an attached document, the record indicates that the information submitted for filing was not sufficient to comply with either 43 CFR 3102.2-4 (1981) or 43 CFR 3102.2-5 (1981), and that each incidence of noncompliance independently supports rejection of appellants' applications.

43 CFR 3102.2-4 (1981) required in part that one of the documents that had to accompany a lease application or be included in a referenced qualifications file was a "certified copy of \* \* \* articles of association or partnership." The record indicates that the articles of partnership of Cretaceous were date stamped by the California State Office, BLM, on February 5, 1982, well after the January 1982 filing period. We have held that BLM may properly reject a lease application where a certified copy of an applicant's articles

of partnership is not filed with the application and the application does not make reference to an appropriate qualifications file. Westates Group No. 8, 69 IBLA 186 (1982).

43 CFR 3102.2-5 required in part that, within 15 days after the filing of a lease application, the applicant had to file a separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of stock owned or controlled, and compliance with certain acreage limitations. The record indicates that the statement of Wol Y. Eddy, who owns or controls 21.3 percent of the stock of RBE, was date stamped by the California State Office, BLM, on February 19, 1982, more than 15 days after the January 1982 filing period. <sup>4/</sup> BLM may properly reject a lease application where an applicant did not submit the separate statement of a stockholder owning or controlling more than 10 percent of the corporate stock, in accordance with 43 CFR 3102.2-5(b) (1981). Black Jack Oil Co., 59 IBLA 163 (1981).

Accordingly, we conclude that BLM properly rejected appellants' simultaneous oil and gas lease applications because they were not accompanied by statements of qualifications, as set forth in 43 CFR 3102.2-4 (1981) and 43 CFR 3102.2-5 (1981), and did not bear a reference to a qualifications file where the statements had previously been filed in accordance with 43 CFR 3102.2-1(c) (1981). James W. Lacy, *supra*; Rockies Energy Corp., *supra*. A noncompetitive oil and gas lease for Federal lands may only be issued to the first-qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). BLM was required by 43 CFR 3112.6-1(b) (1981) to reject a lease application where the applicant "has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Franklin D. Arness  
Administrative Judge  
Alternate Member

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<sup>4/</sup> The record indicates that the statement of Robert B. Eddy, who owns or controls 78.7 percent of the stock of RBE, was date stamped by the California State Office, BLM, on Jan. 20, 1982, and included in qualifications file CA-3000.

